

Amendment No. 2 to SB1362

McNally  
Signature of Sponsor

**AMEND Senate Bill No. 1362\***

**House Bill No. 1293**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Child Protection Act".

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following new section:

**39-13-534.**

(a) As used in this section:

(1) "Multiple acts of sexual abuse of a child" means:

(A)

(i) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014;

(ii) Engaging in at least one (1) incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions; provided, that at least one (1) such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2014; or

(iii) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions; provided, that at least one (1) such incident

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occurred within the county in which the charge is filed and that  
one (1) such incident occurred on or after July 1, 2014; and

(B) The victims of the incidents of sexual abuse of a child share distinctive, common characteristics, qualities or circumstances with respect to each other or to the person committing the offenses, or there are common methods or characteristics in the commission of the offense, allowing otherwise individual offenses to merge into a single continuing offense involving a pattern of criminal activity against similar victims. Common characteristics, qualities or circumstances for purposes of this subdivision (a)(1)(B) include, but are not limited to:

(i) The victims are related to the defendant by blood or marriage;

(ii) The victims reside with the defendant; or

(iii) The defendant was an authority figure, as defined in § 39-13-527(a)(3), to the victims and the victims knew each other;  
and

(2) "Sexual abuse of a child" means to commit an act upon a minor child that is a violation of:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

- (C) § 39-13-504;
- (D) § 39-13-522;
- (E) § 39-13-527;
- (F) § 39-13-529(a);
- (G) § 39-13-531; or
- (H) § 39-13-532.

(b) A person commits continuous sexual abuse of a child who:

(1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(i) or (ii); or

(2) Over a period of less than ninety (90) days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(1)(A)(iii).

(c)

(1) A violation of subsection (b) is a Class A felony if at least three (3) of the acts of sexual abuse of a child constitute violations of any of the following:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

- (C) § 39-13-504;
- (D) § 39-13-522;
- (E) § 39-13-529(a); or
- (F) § 39-13-531.

(2) If one (1) of the three (3) or more violations under subdivision (c)(1) would be punished as a Class B felony if it were a single conviction, then the punishment for a violation of subsection (b) shall be a Class B felony.

(3) A violation of subsection (b) is a Class B felony if there are less than three (3) acts of sexual abuse of a child under the following subdivisions (c)(3)(A) – (F) but there are at least three (3) acts under any combination of subdivision (c)(1) and this subdivision (c)(3):

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-529(a); or

(F) § 39-13-531.

(4) A violation of subsection (b) is a Class C felony if at least three (3) of the acts of sexual abuse of a child constitute violations of the following:

(A) § 39-13-527; or

(B) § 39-13-532.

(d) At least thirty (30) days prior to trial, the state shall file with the court a written notice identifying the multiple acts of sexual abuse of a child upon which the violation of this section is based. The notice shall include the identity of the victim and the statutory offense violated. Upon good cause, and where the defendant was unaware of the predicate offenses listed in the notice, the trial court may grant a continuance to facilitate proper notification of the incidents of sexual abuse of a child and for preparation by the defense of such incidents specified in the statement.

(e) The jury must agree unanimously that the defendant:

(1)

(A) During a period of ninety (90) or more days in duration,  
committed three (3) or more acts of sexual abuse of a child; or

(B) During a period of less than ninety (90) days in duration,  
committed five (5) or more acts of sexual abuse of a child against at least  
two (2) different children; and

(2) Committed at least three (3) of the same specific acts of sexual abuse  
within the specified time period if prosecution is under subdivision (e)(1)(A) and  
at least five (5) of the same specific acts of sexual abuse within the specified time  
period if prosecution is under subdivision (e)(1)(B).

(f) The state may charge alternative violations of this section and of the separate  
offenses committed within the same time period. The separate incidents shall be alleged  
in separate counts and joined in the same action. A person may be convicted either of  
one (1) criminal violation of this section, or for one (1) or more of the separate incidents  
of sexual abuse of a child. The state shall not be required to elect submission to the jury  
of the several counts. The jury shall be instructed to return a verdict on all counts in the  
indictment. In the event that a verdict of guilty is returned on a separate count that was  
included in the notice of separate incidents of sexual abuse of a child and the jury  
returns a verdict of guilty for a violation of this section, at the sentencing hearing the trial  
judge shall merge the separate count into the conviction under this section and only  
impose a sentence under this section. A conviction for a violation of this section bars the  
prosecution of the individual incidents of sexual abuse of a child as separate offenses  
described in the pretrial notice filed by the state and presented to the jury. A prosecution  
for a violation of this section does not bar a prosecution in the same action for individual  
incidents of sexual abuse not identified in the state's pretrial notice. The state shall be  
required to elect as to those individual incidents of sexual abuse not contained in the

pretrial notice prior to submission to the jury. A conviction for such elected offenses shall not be subject to merger at sentencing.

(g) Notwithstanding any other law to the contrary, a person convicted of a violation of this section shall be punished by imprisonment and shall be sentenced from within the full range of punishment for the offense, between Ranges I—III.

SECTION 3. Tennessee Code Annotated, Section 40-35-501, is amended by adding the following new subsection (l) and by redesignating existing subsection (l) and all subsequent subsections accordingly:

(l)

(1) There shall be no release eligibility for a person committing continuous sexual abuse of a child as defined § 39-13-534 on or after July 1, 2014, until the person has served the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Such person shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(2) In addition to the punishment authorized by this section, a person sentenced under § 39-13-534 shall, upon release, receive a sentence of community supervision for life pursuant to § 39-13-524.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2014, the public welfare requiring it.